

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of:	)	
	)	
Creation of a Low Power Radio Service	)	MM Docket No. 99-25
	)	
Amendment of Service and Eligibility Rules for	)	MB Docket No. 07-172
FM Broadcast Translator Stations	)	RM-11338

To: The Secretary  
Attn: The Commission

**PETITION FOR PARTIAL RECONSIDERATION  
OF  
FOURTH REPORT AND ORDER AND THIRD ORDER ON RECONSIDERATION**

Conner Media, Inc. ("Conner"), by its attorney, pursuant to §1.429 of the Commission's rules, hereby respectfully requests reconsideration of the Commission's *Fourth Report and Order and Third Order on Reconsideration* (the "*Order*") in the captioned matter, to the extent that it imposes a per-market cap of one application. As explained herein, the rule is premised upon assumptions and rationales that simply do not apply to applicants such as Conner and ultimately would disserve the public interest by artificially limiting the availability of FM translators in areas of need for the extension of limited AM service.<sup>1</sup>

The FCC's stated basis for the one-to-a-market limitation was that parties rarely need multiple translators serving substantially the same area and that "it is inconceivable that a single entity would construct so many stations in a single market." *Order* at ¶ 59. The *Order* apparently assumes that a single translator would suffice to serve an entire market. Attached is a

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<sup>1</sup> As noted below, Conner has pending multiple applications in the Greenville-New Bern-Jacksonville market. Thus Conner would be adversely affected by application of the one-to-a-market rule adopted in the *Order* and is an interested party.

map prepared by Timothy L. Warner, Inc., which shows the locations of the translator applications filed by Conner during the 2003 window for the Greenville-New Bern-Jacksonville, NC market. It can be readily seen from the map that Conner's applications do not all propose to serve substantially the same area. On the contrary, Conner selected five locations in order to achieve coverage of substantial portions of this sprawling market that comprises ten diverse counties. Conner's purpose in filing multiple applications within the same market was a rational means of providing meaningful service to the most heavily-populated portions of the market that would derive the greatest benefit from such service. A single translator could not possibly suffice to serve such a market. This is graphically depicted in the attached Technical Statement, which notes the disproportionately large area of this market relative to its population.

The FCC has repeatedly endorsed and encouraged the use of FM translators to enable AM stations to achieve a degree of coverage parity with their FM competitors. Indeed, in this very *Order*, the Commission hailed "the substantial benefits to local listeners that cross-service translators were providing, for example, providing pre-sunrise and post-sunset coverage of traffic, weather, news and sports programming and improving localism, competition and diversity," *Order*, at ¶ 68, quoting the 2009 translator order that first allowed AM stations to expand their coverage through FM translators. Wishing to spread these benefits, the *Order* expanded the universe of FM translators that would be eligible for such cross-service use. *Id.*, at ¶ 70. The one-to-a-market application cap will impair that effort.

This is also depicted in the attached Technical Statement, in which Mr. Warner notes a multitude of AM stations with need of nighttime service and which do not yet benefit from FM translators. If translator applicants were to be limited to a single facility in this entire market, few of these stations would have an opportunity to achieve service to the areas that depend upon

them. For example, Conner's application (20030317JQD) is the only one pending for Kinston, where station WELS faces a nighttime power restriction of 78 watts. If Conner had to choose to prosecute just one of its in-market applications, it would pick one in a more lucrative area and Kinston would go without. Moreover, as Mr. Warner indicates, even if consideration were to include each of the seven remaining applicants that had filed in the 2003 window for locations in this market, limiting them to a single application would still result in insufficient translators to provide the AM stations with limited nighttime service.

The public interest cannot possibly be served by depriving local AM listeners of the extended service that these applications could provide. As Mr. Warner's findings demonstrate, AM stations with severe service restrictions require more translators than would be available were Conner (or others) to be limited to only a single translator in this entire market. Rather, it would be far more rational to limit applicants to the number of service-restricted AM stations in any given community and to apply that standard on a community-by-community basis rather than on a per-market basis.

We further note that the underlying policy rationale for the one-to-a-market cap was to deter speculation. *Order* at ¶ 59. Yet, it is utterly unclear how imposition of the cap upon applications filed nearly a decade ago will advance that objective. Only by announcing a cap *in advance* and imposing the cap upon *new* applications in *subsequent* filing windows can speculation be deterred. Conner's filings in 2003 could not possibly have been influenced by a rule first proposed in 2012. Rather, Conner filed its applications in reliance upon – and fully consistent with – the rules and policies then in effect and the Commission has presented no reason to apply its new rules retroactively.

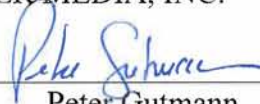


In view of the foregoing, Conner respectfully submits that the Commission should reconsider its one-to-a-market cap on 2003 window applications and, if a cap is to be used at all, to apply it on a per-community-of-license basis rather than on a per-market basis.

Respectfully Submitted,

CONNER MEDIA, INC.

By: \_\_\_\_\_



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May 9, 2012

Technical Statement  
In Support of Petition for Reconsideration  
by  
Conner Media Corporation

May 2012

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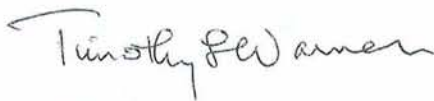
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Declaration

I declare, under penalty of perjury, that I am a technical consultant to broadcasting and other communications systems, that I have over twenty-five years of experience in the engineering of broadcast and other communications systems, that I am familiar with the Federal Communications Commission's Rules found in the Code of Federal Regulations Title 47, that I am a Professional Engineer registered in North Carolina, that I have prepared or supervised the preparation of the attached Technical Statement for Conner Media Corporation, and that all of the facts therein, except for facts of which the Federal Communications Commission may take official notice, are true to the best of my knowledge and belief.



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9 May 2012

### Purpose

This Technical Statement supports a Petition for Reconsideration of the Fourth Report and Order and Third Order on Reconsideration In the Matter of Creation of a Low Power Radio Service, and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations (“Report”).<sup>1</sup>

### Statement

Conner Media Corporation (“Conner”) filed multiple applications in the 2003 translator window. The applications were expressions of interest in service to multiple areas. In particular, applications were filed for service to Greenville, Jacksonville, Arapahoe, and Kinston, North Carolina. Those applications are all in the Arbitron Metro area of Greenville-New Bern-Jacksonville, North Carolina. As such, the Report limits Conner to one applications to be processed.

The limit of one application per market is based on the requirement that “a showing of need for such additional [same market] stations”<sup>2</sup> is normally required for same area translators. In the case of the Greenville area Conner applications, the areas are sufficiently separate that such a showing would not normally be required for the two communities. Figure 1 is a map of the Greenville-New Bern-Jacksonville Metro area with service contours for five of the applications filed by Conner.

The communities are separate and distinct, are each communities of license for facilities in the AM, FM, and television service, and can not be service from a common site with a single translator. For each translator, the 60 dBu contour is shown as a solid line, a

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<sup>1</sup> FCC 12-29, released March 19, 2012.

<sup>2</sup> Ibid., at ¶59, quoting 47 C.F.R. §74.1232(b).



realistic reception limit 50 dBu F(50,50) contour is shown as a dashed line, and a 40 dBu F(50,10) co-channel interference contour is shown as a dotted black line. In no case does a dotted black line cross a 60 dBu service line. For the limited purpose of comparing coverage areas, the same frequency could be allocated at all four sites.

#### AM Station Fill-In Service

In the Report, the FCC reduced the restriction on FM translator stations eligible to serve as fill-in for AM stations.<sup>3</sup> The Greenville-New Bern-Jacksonville market has 17 AM stations, including six (6) with no nighttime protected service and six (6) on Class C Local Service channels, operating with one kilowatt of power, where the nighttime interference free service is minimal. At present there are three (3) AM stations in the market that are authorized for FM translator service, including two of the Class C local channels.

In applications remaining from the 2003 filing window, there are applications from seven (7) different applicants. If each of the remaining applicants were to receive one construction permit, and modify that permit for AM fill-in service, there would not be enough frequencies allocated for each AM with limited nighttime service. In addition, four (4) of the remaining applicants are noncommercial applicants not located locally. To the extent that their applications may be mutually exclusive with commercial applications, those applications will not be permitted to proceed to auction.

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<sup>3</sup> Ibid., at ¶70.

Greenville-New Bern-Jacksonville Area

The Greenville-New Bern-Jacksonville metro area is disproportionately large geographically for the population it contains. The population density is less than 41 persons per square kilometer. The three principal communities have been joined in a common market, though each of the individual communities would not rank as a top market if considered by itself. The straight line distance from Greenville to New Bern is 61 kilometers. From New Bern to Jacksonville is 52 kilometers. From Jacksonville back to Greenville is over 90 kilometers. Those distances are too great for normal daily shopping or for people in one community to consider themselves joined to the others. The market as defined for the purpose of Arbitron Metro areas is not a reasonable market for translators.

